



EMPLOYMENT TRIBUNALS

Claimant: M

Respondent: Q

Heard at: London South Employment Tribunal **On:** 10 May 2019

Before: Employment Judge Ferguson (sitting alone)

Representation

Claimant: Ms B Douglas (friend)

Respondent: Mr C Kennedy (counsel)

JUDGMENT

It is the judgment of the Tribunal that:

The Claimant's complaints of unfair dismissal and maternity/pregnancy discrimination are dismissed because the Tribunal has no jurisdiction to hear them.

REASONS

INTRODUCTION

1. By a claim form presented on 22 December 2017 the Claimant brought complaints of maternity/ pregnancy discrimination and constructive unfair dismissal. She today seeks to amend her claim to add complaints of disability discrimination and detriment on grounds of protected disclosures. This preliminary hearing was listed to determine whether the Tribunal has jurisdiction to hear the Claimant's claim in view of the applicable time limits. I decided to consider that issue first before the application to amend because if the Tribunal has no jurisdiction in respect of the existing claim then it is bound not to have jurisdiction in respect of the proposed new complaints either.
2. I heard evidence from the Claimant and from her mother.

THE FACTS

3. The Respondent is an NHS Hospital Trust. The Claimant was employed by the Respondent as a midwife from 11 April 2011 to 1 March 2017. She was a patient of the hospital in 2016 during pregnancy and childbirth. She claims that she received appalling care and made complaints about this to managers at the hospital. On her return from maternity leave she was moved to a different department which she says involved working in close proximity with those whom she had complained about. She says she found this extremely stressful and was signed off work with “work related stress” from 6 February 2017. There is a corresponding entry in the Claimant’s GP records on this date. She resigned on 8 February 2017 and her last day in employment was 1 March 2017. In her resignation email she said she no longer felt comfortable working at the hospital following her experience of pregnancy and birth with the Trust. She referred to the lack of support she received when she tried to discuss her care with the team. She said this had exacerbated pre-existing anxiety and PTSD. She also complained that a confidential enquiry to HR about her return to work had impacted on her place of work being changed.
4. On 13 July 2017 the Claimant wrote to the Respondent’s chief executive to complain about how she was treated on returning to work from maternity leave. She asked for the complaints outlined in her resignation email to be addressed and to receive an apology for her treatment. It is a lengthy, detailed and well-written letter.
5. The Claimant’s evidence was that she was not contemplating litigation at this stage. The possibility did not occur to her until a conversation with her mother sometime in early September 2017 when her mother said she might have a claim for constructive unfair dismissal. After this the Claimant spoke to a friend who referred her to solicitors. She says she contacted the solicitors within a couple of days of the conversation with her mother. They took on her case.
6. Early conciliation was commenced on 19 October and ended on 19 November 2017. The Claimant says that after this she was concerned about the claim being out of time, but assumed that the solicitors had to submit the claim on her behalf. As time went on she researched the matter online and discovered that she could submit the claim herself. She did so on 22 December 2017.
7. In the claim form the Claimant brought complaints of unfair dismissal and discrimination on grounds of pregnancy or maternity. She complained that the Respondent had refused or ignored her attempts to hold conciliatory discussions with the home birth team before her return to work. She also complained that HR had passed on to her manager what she understood to be a confidential enquiry about leaving the Respondent’s employment, and that she was put in a different team, on the ward, because she could not say how long she was planning to stay in employment. This involved a change in hours, skills and childcare arrangements. She said the stress caused her to seek therapy and GP support and she felt she had to leave for her health.

8. The Claimant's evidence was that prior to September 2017 she was in no state to research employment rights or seek legal advice. She said her mental health worsened following her resignation. She was receiving counselling for several months from around April 2017. Her mother's evidence was that the Claimant was in a "depressive turmoil" and emotionally "barely keeping things together".

THE LAW

9. The relevant time limits for bringing a Tribunal claim are set out in s.111 (read with s.207B) of the Employment Rights Act 1996 and s.123 (read with s.140B) of the Equality Act 2010. For both unfair dismissal and maternity/pregnancy discrimination there is a primary three-month time limit, which may be extended if the claimant contacts ACAS to commence early conciliation within that time limit.
10. The Tribunal only has jurisdiction to consider an unfair dismissal claim presented outside the time limit if the claimant shows that it was not reasonably practicable to present the claim within the time limit and he or she presented the claim within a further reasonable period.
11. As to discrimination complaints, the Tribunal has a broad discretion in deciding whether it is just and equitable to extend time under s.123 (Southwark London Borough v Alfolabi [2003] IRLR 220). Factors that may be considered include the relative prejudice to the parties, the length of the delay, the reasons for the delay and the extent to which professional advice was sought and relied upon. The onus is on the claimant to show that it is just and equitable to extend the time limit.

CONCLUSIONS

12. There is no dispute that the claim was presented out of time. The ordinary time limit for unfair dismissal expired on 31 May 2017. The discrimination complaint is not entirely clear from the claim form, but the Claimant refers only to matters that took place before her resignation, so the time limit would expire on 31 May 2017 at the latest. The claim form was presented almost 7 months later. The Claimant cannot benefit from any extension under the early conciliation provisions because ACAS were not contacted until well after the ordinary time limit.
13. I accept that the Claimant has suffered from mental health problems and that these were acute around the time of her resignation. I also accept that she has a genuine and strongly-held belief that she was treated very badly, both as a patient and then when she returned to work. I do not accept, however, that the Claimant's mental state was so bad for the whole three-month period up to 31 May 2017 that she could not have (a) found out about her employment rights and (b) contacted ACAS. The Claimant did not attend her GP during that period about any mental health issue. There is no evidence that she was in such a bad state that she was unable to cope with daily life. In July, when the Claimant claims she was still in no fit state to do anything towards bringing a claim, she wrote a detailed and well-expressed letter to the chief executive of the Trust complaining about the matters that led her to resign. That significantly undermines her evidence that she was

incapable of making a simple enquiry about her employment rights. I consider that the principal reason for the delay was that Employment Tribunal proceedings had either not occurred to the Claimant, or she was not interested in pursuing a claim until she discussed it with her mother in September 2017.

14. In respect of the unfair dismissal complaint, I am not satisfied that it was not reasonably practicable for the Claimant to present her claim within the time limit. Even if she was ignorant of her rights, that ignorance was not reasonable. I note that she also said in her evidence she was a member of a union at the time of her resignation. She could easily have asked for advice about bringing a claim if she had wanted to.
15. I am also not persuaded that it would be just and equitable to extend the time limit for the maternity/ pregnancy discrimination complaint. The time limit is there for a reason, and the fact that a claim has not been contemplated, or decided against, within the time limit is not a sufficient basis to extend it. The length of the delay was substantial and there is a real possibility that the Respondent would be prejudiced in defending the claim, which is likely to turn on a factual dispute about the motivation of the managers involved. Overall I consider the balance of prejudice falls on the Respondent's side and I do not consider it appropriate to exercise my discretion to extend the time limit.
16. The claims must therefore be dismissed as the Tribunal has no jurisdiction to hear them.

Employment Judge **Ferguson**
Date: 14 May 2019